



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 18, 1991

Ms. Cathy L. Meyer
Assistant City Attorney
P. O. Box 152288
Irving, Texas 75015-2288

OR91-574

Dear Ms. Meyer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14030.

You have received a request for information relating to an investigation into alleged water pollution. Specifically, the requestor seeks "all information in your files regarding the property located at 714 W. Shady Grove . . . and information on the previous owner S & H Tank." You advise us that you have released all of the information requested except for information that would identify or might tend to identify a number of informers. You claim this information is excepted from required public disclosure by the informer's privilege, as incorporated by section 3(a)(1) of the Open Records Act.

The interest protected by the informer's privilege is to encourage persons to report possible misconduct without their identities being disclosed, and therefore, to prevent retaliation against them. Open Records Decision No. 470 (1987) at 4. Although it ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing civil laws. Attorney General Opinion MW-575 (1982). However, the informer's privilege does not protect statements that evidence no wrongdoing or violation of the law. Open Records Decision No. 582 (1990).

The complaints for which you claim exception under the informer's privilege aspect of section 3(a)(1) relate to alleged pollution resulting from improper storage of waste in certain waste storage tanks. Subchapter I of the Texas Water Code

regulates the use of underground and aboveground storage tanks. *See also* 31 T.A.C. ch. 334 (Underground Storage Tanks). Sections 26.212 and 26.213 of the Water Code criminalize violations of waste storage statutes. Section 26.212 states in part:

(a) No person may discharge or cause or permit the discharge of any waste into or adjacent to any water in the state which causes or which will cause water pollution.

Section 26.213 provides in part:

(a) A person who violates the provisions of Subsection (a) or Subsection (b) of Section 26.212 of this code is guilty of a misdemeanor.

You advise us that the complaints have resulted in both civil and criminal litigation for serious pollution violations. Furthermore, you advise us that the complainants wish to remain anonymous for fear of retaliation. We have examined the documents submitted to us for review. The documents do not reveal that the identities of the complainants are known to those who might have reason to resent their communications. We conclude, then, that release of the complainants' names may subject the complainants to retaliation. Accordingly, information that identifies or would tend to identify the complainants may be withheld from required public disclosure by the informer's privilege aspect of section 3(a)(1).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-574.

Yours very truly,



Kym Oltrogge
Assistant Attorney General
Opinion Committee

KO/GK/lcd

Ref.: ID#s 14030, 14065

cc: Ms. Joy V. Springer
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